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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.03.2022

Coram

THE HONOURABLE MR. JUSTICE P.N.PRAKASH
and
THE HONOURABLE MR. JUSTICE A.A.NAKKIRAN

Crl.M.P.No.2854 of 2022
in
H.C.P.No.669 of 2018

P.Elayarasu

..Petitioner/ Petitioner

Vs.

- 1.The Superintendent of Police,
Namakkal.
- 2.The Deputy Superintendent of Police,
Thiruchengodu.
- 3.The Inspector of Police,
Rural Police Station,
Tiruchengodu.
- 4.Muthusamy
- 5.Manimala

.. Respondents/ Respondents

Habeas Corpus Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Habeas Corpus directing the respondents 4 and 5 to bring the minor child E.Pranaveega, aged 6 years, daughter of the petitioner to his house at D.No.5/111A, Panankadu, Sirumolasi Post, Tiruchengodu Taluk, Namakkal District, on the date and time fixed by this Court and permit the petitioner to interact with the child for such time fixed by this Court or permit the petitioner to take the child from the custody of the respondents 4 and 5 from their house on the date and time fixed by this Court and permit the petitioner to keep the child with him for the time fixed by this Court and hand over the child after the time permitted in the order and hand over to the respondents 4 and 5.



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For Petitioner : Ms.L.Srileka

For Respondents: Mr.R.Muniyapparaj

Additional Public Prosecutor [R1 to R3]

ORDER

[Order of the Court was made by P.N.PRAKASH, J]

For the sake of convenience, the parties are referred to by their respective names.

2. The facts of this case are as under:

Elayarasu got married to Suganya on 02.06.2014 and through the wedlock, he has a child Pranaveega [D.O.B : 28.01.2016]. Suganya died on 15.05.2016. Alleging that the child Pranaveega is in the illegal custody of Muthusamy [fourth respondent herein] and Manimala [fifth respondent herein], the in-laws of Elayarasu, a petition in H.C.P.No.669 of 2018 was filed by Elayarasu, in which a Division Bench of this Court, by order dated 23.04.2018, disposed of the same with the following directions:

'4. Therefore, in the interests of justice, the petitioner is given visitation rights to see his child on every Sunday between 10.00 a.m. and 12.00 noon and he must give prior intimation to the 4th and 5th Respondents in this regard. The petitioner is further directed to work out his remedy before the appropriate forum with regard to the custody of his child.

With the above observations, the Habeas Corpus Petition is disposed of.'

3. Thereafter, Elayarasu filed G.W.O.P.No.39 of 2019 in the District Court, Namakkal, for guardianship and custody of Pranaveega against Muthusamy [fourth respondent herein] and Manimala [fifth respondent herein] and the same is pending. Elayarasu filed an interim application in I.A.No.1 of 2021 in G.W.O.P.No.39 of 2019 seeking interim custody of Pranaveega, which came to be dismissed by the District Court, Namakkal, on 06.10.2021 on the ground that the petition is not maintainable in the light of the order passed by this Court dated 23.04.2018 in H.C.P.No.669 of 2018. Challenging such order, Elayarasu filed C.R.P.(PD) No.2789 of 2021, which has been dismissed by a learned single Judge of this Court on 06.01.2022 with the following observations:

'4. I am of the opinion that the learned District Judge was justified in dismissing the application for interim custody during holidays and vacation, in view of the order passed by this Court in HCP No.669 of



2018. The order now sought for by the petitioner in I.A.No.1 of 2021 would amount to a variation of the order of the Division Bench by the learned District Judge. The same cannot be done.

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5. Therefore, leaving it open to the petitioner to move the Division Bench seeking modification of the order made in HCP No.669 of 2018, this Revision is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.'

Therefore, Elayarasu is before this Court seeking modification of the order dated 23.04.2018 passed in H.C.P.No.669 of 2018.

4. Heard Ms.L.Srileka, learned counsel appearing for the petitioner and Mr.R.Muniyapparaj, learned Additional Public Prosecutor appearing for the State.

5. In our opinion, no notice need be sent to Muthusamy [fourth respondent herein] and Manimala [fifth respondent herein] as we do not intend to either review the order dated 23.04.2018 passed in H.C.P.No.669 of 2018 or modify the same. We propose to clarify the same by holding that the said order was passed merely as a temporary arrangement in the Habeas Corpus proceedings and the order dated 23.04.2018 passed in H.C.P.No.669 of 2018 will not stand in the way of the District Court to pass appropriate interim orders or final orders with regard to interim custody/visitation rights in G.W.O.P.No.39 of 2019.

6. The District Court, Namakkal, is directed to complete the proceedings in G.W.O.P.No.39 of 2019 expeditiously, in any event, within a period of four months from the date of receipt of a copy of this order, provided all the parties co-operate.

With the above clarification, this miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-VII)

//True Copy//

Sub Assistant Registrar

gm

To

1.The District Judge, Namakkal.

2.The Superintendent of Police, Namakkal.



3.The Deputy Superintendent of Police,
Thiruchengodu.

4.The Inspector of Police,
Rural Police Station, Tiruchengodu.

5.The Public Prosecutor,
High Court, Madras.

+lcc to M/s.Srileka, Advocate, S.R.No.15470

Crl.M.P.No.2854 of 2022
in H.C.P.No.669 of 2018

MG(CO)
SB(04/04/2022)